

EXHIBIT 59

TONY UEBER
July 27, 2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

RS FIT NW LLC,	:Chapter 11
	:Case No. 20-11568(KBO)
Debtor.	:(Jointly Administered)
	:
24 HOUR FITNESS WORLDWIDE,	:
INC.,	:
	:
Plaintiff,	:
	:
-vs.-	:
	:
CONTINENTAL CASUALTY COMPANY;	:
ENDURANCE AMERICAN SPECIALTY	:
INSURANCE COMPANY; STARR	:
SURPLUS LINES INSURANCE COMPANY;	:
ALLIANZ GLOBAL RISKS US INSURANCE:	:
COMPANY; LIBERTY MUTUAL INSURANCE:	:
COMPANY; BEAZLEY-LLOYD'S	:
SYNDICATES 2623/623;	:
ALLIED WORLD NATIONAL ASSURANCE	:
COMPANY; QBE SPECIALTY INSURANCE	:
COMPANY; and GENERAL SECURITY	:
INDEMNITY COMPANY OF ARIZONA,	:
	:
Defendants.	:

JULY 27, 2022

ZOOM VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF
TONY UEBER, held via remote teleconference hosted by U.S.
Legal Support, located at 1818 Market Street, Suite 1400,
Philadelphia, Pennsylvania, on Wednesday, July 27, 2022,
at 12:02 p.m. before Michelle Keys, a Stenographer and
Notary Public of the Commonwealth of Pennsylvania.

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<p style="text-align: right;">Page 6</p> <p style="text-align: center;">- - -</p> <p>(It is hereby stipulated and agreed by and between counsel for the respective parties that sealing, certification, and filing are waived; and that all objections, except as to the form of the question, are reserved until the time of trial.)</p> <p>THE VIDEOGRAPHER: Good afternoon. We are now on the record.</p> <p>Participants should be aware that this proceeding is being recorded, and, as such, all conversations held will be recorded unless there is a request and agreement to go off the record.</p> <p>This is the remote video-recorded deposition of Tony Ueber. Today is Wednesday, July 27, 2022, and the time is approximately 12:02 p.m. Eastern. We are here in the matter of 24 Hour Fitness Worldwide, Inc., versus Continental Casualty Company.</p> <p>My name is James Soto, Junior, remote video technician on behalf of U.S. Legal Support. I am not related to any party in</p>	<p style="text-align: right;">Page 7</p> <p>this action, nor am I financially interested in the outcome.</p> <p>At this time, will the reporter Michelle Keys, on behalf of U.S. Legal Support please enter the statement for remote proceedings into the record.</p> <p>THE STENOGRAPHER: The attorneys participating in this deposition acknowledge that I am not physically present in the deposition room and that I will be reporting this deposition remotely. They further acknowledge that, in lieu of an oath administered in person, the witness will verbally declare his/her testimony in this matter is under penalty of perjury. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting.</p> <p>Attorneys, please indicate your name, as well as who you represent, and your agreement on the record.</p> <p>MR. DENN: Matt Denn for CNA, agreed.</p> <p>MR. WEISS: David Weiss for 24 Hour Fitness, and on behalf of Mr. Ueber, agreed.</p>
<p style="text-align: right;">Page 8</p> <p>MR. ANDERSON: Dennis Anderson for QBE Specialty Insurance Company and General Security Indemnity Company of Arizona, and on their behalf, we agree.</p> <p>THE STENOGRAPHER: I'm still waiting on three people.</p> <p>MR. MCNABNEY: Joel McNabney on behalf of Liberty Mutual, agrees.</p> <p>MS. MCDONNELL: Marlie McDonnell from Clyde & Co for Defendant Allianz, and we agree.</p> <p>MR. WHANG: Calvin Whang for Defendant Allied World National Assurance Company, and we agree.</p> <p style="text-align: center;">- - -</p> <p>TONY UEBER,</p> <p>after having been first duly sworn, was examined and testified as follows:</p> <p style="text-align: center;">- - -</p> <p>THE STENOGRAPHER: Thank you. You may proceed.</p> <p>///</p> <p>///</p> <p>///</p> <p>///</p>	<p style="text-align: right;">Page 9</p> <p style="text-align: center;">- - -</p> <p style="text-align: center;">E X A M I N A T I O N</p> <p style="text-align: center;">- - -</p> <p>BY MR. DENN:</p> <p>Q. Good morning, Mr. Ueber. You said it's 11:00 o'clock where you are?</p> <p>A. It is, yes.</p> <p>Q. And, good morning. My name is Matt Denn. I represent Continental Casualty. I'm going to be taking your deposition today.</p> <p>Have you -- have you had your deposition taken before?</p> <p>A. I have, yes.</p> <p>Q. Okay. You -- you probably know the process. I'll just run through, quickly, some of the formalities.</p> <p>You've just been sworn in by a court reporter. So you're -- you're testifying under oath today, just as you would be if you were testifying in court. I'm going to have a series of questions for you. If at any point one of my questions is unclear or you don't understand it, then please just ask me to clarify my question and I'd be happy to do that.</p> <p>If you answer a question, we'll</p>

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<p style="text-align: right;">Page 38</p> <p>1 THE WITNESS: I would say generally</p> <p>2 speaking, yes.</p> <p>3 BY MR. DENN:</p> <p>4 Q. Is -- is the draft letter correct that in the</p> <p>5 weeks leading up to March 15th, the company had seen</p> <p>6 a significant decline in club member traffic and</p> <p>7 sign-ups?</p> <p>8 A. That's what it says in the letter, so I would</p> <p>9 assume that that was true.</p> <p>10 Q. Well, I certainly don't want you to assume.</p> <p>11 I'm just asking you based on your recollection if --</p> <p>12 if that was a -- was a correct statement at the</p> <p>13 time?</p> <p>14 A. Yes.</p> <p>15 MR. WEISS: Objection to form.</p> <p>16 THE WITNESS: Yes.</p> <p>17 MR. WEISS: You can go ahead and</p> <p>18 answer.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. DENN:</p> <p>21 Q. Is the letter also correct that this decline</p> <p>22 had put an even greater financial strain on an</p> <p>23 already challenging financial position?</p> <p>24 MR. WEISS: Objection to form.</p> <p>25 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 39</p> <p>1 BY MR. DENN:</p> <p>2 Q. Could you -- could you describe what that</p> <p>3 already challenging financial position was?</p> <p>4 A. I think at the time, it was the decline in</p> <p>5 guest traffic through the beginning of the year,</p> <p>6 primarily as a result of people's concern around</p> <p>7 COVID.</p> <p>8 Q. And to that point, is it correct that the</p> <p>9 pandemic in the first two weeks of March of 2020 was</p> <p>10 having a dramatic impact on the company's business?</p> <p>11 MR. WEISS: Objection to form.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. DENN:</p> <p>14 Q. In this draft message from March 15th, there</p> <p>15 are a list of six bullet points representing various</p> <p>16 changes that will happen in the company.</p> <p>17 Does this represent what your plan</p> <p>18 was on March 15th with respect to potential changes</p> <p>19 at the company?</p> <p>20 A. Yeah. Again, I don't know if this is the</p> <p>21 final version of the document or final, you know,</p> <p>22 version of the steps that we were planning to take.</p> <p>23 It was a very, very fluid situation throughout that.</p> <p>24 I think -- I don't know if March 15th was -- must</p> <p>25 have been a Sunday, right?</p>
<p style="text-align: right;">Page 40</p> <p>1 So, at that point, we were doing --</p> <p>2 trying to do everything we could to be able to</p> <p>3 operate the clubs in a safe manner and be able to,</p> <p>4 you know, manage the business to meet the demand.</p> <p>5 Q. Could you explain what you meant by the --</p> <p>6 the last thing that you just said, "manage the</p> <p>7 business to meet the demand"?</p> <p>8 A. Well, sure. When the demand goes down, you</p> <p>9 need to take actions to reduce expenses and reduce</p> <p>10 staffing, which is normal course of business.</p> <p>11 Q. So looking at this list of bullet points,</p> <p>12 the -- the first one "Overall reduction of labor</p> <p>13 hours by 30 percent," is that an effort to do what</p> <p>14 you just described, to adjust staffing to meet</p> <p>15 traffic?</p> <p>16 A. Correct.</p> <p>17 Q. And then the second -- the "Temporary closure</p> <p>18 of Kid's Clubs," was that the purpose of that or was</p> <p>19 there a different purpose to that?</p> <p>20 A. That probably was two purposes. One, to</p> <p>21 reduce expenses; and, two, again, to, you know,</p> <p>22 ensure the health and safety of our members, team</p> <p>23 members, and their children.</p> <p>24 Q. And then number 3, the -- the "elimination of</p> <p>25 the overnight hours." Was -- was that for staffing</p>	<p style="text-align: right;">Page 41</p> <p>1 reasons?</p> <p>2 A. That would have been twofold as well. One,</p> <p>3 to reduce expenses; and then also to give us</p> <p>4 opportunities to be able to clean the clubs if we</p> <p>5 needed to.</p> <p>6 Q. There is a reference to "Significant</p> <p>7 modification of GX 24 schedules."</p> <p>8 What is GX 24?</p> <p>9 A. Again, those are group fitness classes. So</p> <p>10 that would have had a twofold as well. One, to</p> <p>11 reduce expenses; and, two -- I don't remember the</p> <p>12 exact specific things that were happening in the</p> <p>13 public health environment at that point, but one of</p> <p>14 them was creating support for social distancing.</p> <p>15 Our group exercise rooms tend to be</p> <p>16 small. You know, you've got a lot of people in</p> <p>17 there for various types of classes, whether it's</p> <p>18 Zumba or yoga class or kickboxing class or whatever</p> <p>19 it might be, so it's more difficult to be able to</p> <p>20 ensure people have the space that they would have</p> <p>21 needed in order to social distance. So it was</p> <p>22 certainly safer to close those spaces and not take</p> <p>23 risks.</p> <p>24 Q. And the elimination of the low-attendance</p> <p>25 classes, was that -- that was to adjust staffing to</p>

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<p style="text-align: right;">Page 66</p> <p>1 A. Yes.</p> <p>2 Q. And the purpose of the -- the letter is to</p> <p>3 let people know what changes the company is going to</p> <p>4 be making and to explain the reason for those</p> <p>5 changes?</p> <p>6 MR. WEISS: Objection to form.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. DENN:</p> <p>9 Q. So this draft is dated March 15, 2020.</p> <p>10 Does -- does this draft indicate to</p> <p>11 the best of your recollection what the plan was on</p> <p>12 March 15, 2020, and what the public explanation for</p> <p>13 that plan would be on March 15, 2020?</p> <p>14 MR. WEISS: Objection to form.</p> <p>15 THE WITNESS: Yes. As of 7:44 p.m.</p> <p>16 and as of draft 4 of God knows how many</p> <p>17 drafts.</p> <p>18 BY MR. DENN:</p> <p>19 Q. And the plan as far as what was going to be</p> <p>20 communicated to -- to members and -- and the rest of</p> <p>21 the outside community is these three bullet points</p> <p>22 that are listed under "Changes to Operating Our</p> <p>23 Business"?</p> <p>24 MR. WEISS: Objection to form.</p> <p>25 THE WITNESS: Can you rephrase,</p>	<p style="text-align: right;">Page 67</p> <p>1 please?</p> <p>2 BY MR. DENN:</p> <p>3 Q. Sure.</p> <p>4 There is a section of this draft</p> <p>5 message that is entitled "Changes to Operating Our</p> <p>6 Business."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And there are three bullet points and then a</p> <p>10 fourth one which says "Additional decisions here?"</p> <p>11 Any other moves we are making?"</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. So -- so do the three bullet points represent</p> <p>15 the changes to operating the business that</p> <p>16 24 Hour Fitness was planning as of March 15, 2020?</p> <p>17 MR. WEISS: Objection to form.</p> <p>18 THE WITNESS: Yes. As of March 15th,</p> <p>19 we were trying to do two things: One, you</p> <p>20 know, act on the best available</p> <p>21 information at the time in order to</p> <p>22 provide a safe environment for our team</p> <p>23 members and our members, which is what the</p> <p>24 touch-free club check-in with 24 Hour GO,</p> <p>25 promoting the programs and workouts that</p>
<p style="text-align: right;">Page 68</p> <p>1 we had on the 24GO app, our meal delivery,</p> <p>2 pointing out other benefits that we could</p> <p>3 provide to people to keep them engaged</p> <p>4 with us if they weren't comfortable coming</p> <p>5 to the club because a lot of members</p> <p>6 clearly weren't comfortable coming to the</p> <p>7 club, which was indicative of the decline</p> <p>8 in member check-ins, and also the decline</p> <p>9 in guest traffic.</p> <p>10 And it was also letting them know</p> <p>11 about the specific operational changes</p> <p>12 that were being made. Again, temporary</p> <p>13 closing all the Kid's Clubs because those</p> <p>14 are smaller spaces where, you know, we</p> <p>15 weren't -- we didn't know whether or not</p> <p>16 they were safe for the kids to be in.</p> <p>17 Closing overnight in order for -- to allow</p> <p>18 us to be able to ensure that the clubs</p> <p>19 were -- we had time to clean the clubs.</p> <p>20 And then getting -- you know, removing the</p> <p>21 GX classes, which again were in smaller</p> <p>22 spaces. Either canceling the classes or</p> <p>23 moving them into the larger spaces in the</p> <p>24 basketball courts.</p> <p>25 So, yes, that was -- at the time,</p>	<p style="text-align: right;">Page 69</p> <p>1 that was our best thinking on what it</p> <p>2 would take to be able to both meet</p> <p>3 members' needs, keep our members engaged,</p> <p>4 and keep the clubs open in the context of</p> <p>5 the broader public health disaster that</p> <p>6 was unfolding in front of us.</p> <p>7 BY MR. DENN:</p> <p>8 Q. And to the point that you just made, there's</p> <p>9 a -- a sentence immediately after these bullet</p> <p>10 points that says "These decisions also follow CDC,</p> <p>11 local, and state health agency social distancing</p> <p>12 recommendations and will help us keep the club</p> <p>13 environment healthy and safe for everyone."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. So were -- were these -- were these steps the</p> <p>17 company's best efforts to ensure member and staff</p> <p>18 health and safety as of March 15, 2020, based on the</p> <p>19 information that you had?</p> <p>20 A. Yes.</p> <p>21 Q. And -- and going back to the -- the paragraph</p> <p>22 that precedes those bullet points it says "This</p> <p>23 unprecedented situation is having a dramatic impact</p> <p>24 on our business and our people, and it is imperative</p> <p>25 that we take immediate action to ensure we can</p>

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<p style="text-align: right;">Page 70</p> <p>1 continue providing services to you, our club</p> <p>2 members, and maintain our business for our team</p> <p>3 members over the long term."</p> <p>4 "Team members" is -- is staff people?</p> <p>5 A. Yes.</p> <p>6 Q. So -- so when you say "maintain our business</p> <p>7 for our team members over the long term," what</p> <p>8 what is that a reference to?</p> <p>9 A. I'm not sure that that would have been</p> <p>10 anything that would have made it -- just rereading</p> <p>11 that, I would be surprised if that was in the final</p> <p>12 version because it doesn't feel very elegant. But I</p> <p>13 think it's just making sure that we can keep the</p> <p>14 clubs open for our team members and our members in a</p> <p>15 safe and effective manner given the -- given the</p> <p>16 circumstances.</p> <p>17 Q. There has been some reference during this</p> <p>18 case to 24 Hour Fitness assuming that COVID-19 was</p> <p>19 present in all of its clubs.</p> <p>20 Did you assume that COVID-19 was</p> <p>21 present in all of 24 Hour Fitness' clubs?</p> <p>22 MR. WEISS: Objection to form.</p> <p>23 THE WITNESS: I think, at that point,</p> <p>24 given, you know, how things were</p> <p>25 unfolding, you know, at the date of this</p>	<p style="text-align: right;">Page 71</p> <p>1 letter on March 15th, we felt like these</p> <p>2 actions were the appropriate actions to</p> <p>3 take, given the information that we had in</p> <p>4 order to ensure the safety of our members</p> <p>5 and team members from COVID, which was --</p> <p>6 you know, we were getting more and more</p> <p>7 information hourly at this point on the</p> <p>8 spread and how many people were infected</p> <p>9 and where people were that were infected</p> <p>10 across all the different geographies that</p> <p>11 we did business within.</p> <p>12 So, yes, at this point, we felt like</p> <p>13 these actions would enable us to be able</p> <p>14 to keep the clubs open, follow the</p> <p>15 guidelines that were being, you know --</p> <p>16 that were being offered by public health</p> <p>17 officials, and be able to keep the clubs</p> <p>18 open for people and for our team members.</p> <p>19 BY MR. DENN:</p> <p>20 Q. In terms of my question, did you -- did you</p> <p>21 assume that COVID-19 was present in -- in each and</p> <p>22 every one of the clubs?</p> <p>23 A. I think we had to assume that it certainly</p> <p>24 could have been present in all of the clubs at that</p> <p>25 point.</p>
<p style="text-align: right;">Page 72</p> <p>1 Q. Did you assume that it, in fact, was present?</p> <p>2 A. Well, we assumed that it was because we took</p> <p>3 these actions to be able to mitigate any spread if</p> <p>4 it was present in the clubs.</p> <p>5 Q. Do you recall on what date you began to</p> <p>6 assume that it was present in all the clubs?</p> <p>7 MR. WEISS: Objection to form.</p> <p>8 THE WITNESS: I think -- yeah. I</p> <p>9 mean, I think -- this was a Sunday, the</p> <p>10 15th. And I think as -- and then at this</p> <p>11 point, we felt like -- you know, we felt</p> <p>12 like it was still possible to be able to</p> <p>13 mitigate -- you know, mitigate the spread.</p> <p>14 So if somebody did have COVID, but they</p> <p>15 were masked, they were dis- -- you know,</p> <p>16 6 feet of social distancing, we were</p> <p>17 disinfecting the clubs. We had touch-free</p> <p>18 check-in. You know, I think at this</p> <p>19 point, I can't recall whether we had</p> <p>20 plastic partitions put up at the front</p> <p>21 desk or not, just like a lot of other</p> <p>22 businesses were doing at this point this</p> <p>23 time.</p> <p>24 So we felt that these actions would</p> <p>25 allow us to keep the clubs open and have a</p>	<p style="text-align: right;">Page 73</p> <p>1 confidence level that we would be able to</p> <p>2 mitigate any risk of transmission within</p> <p>3 the clubs.</p> <p>4 I think as this unfolded over the</p> <p>5 next couple of days and it became apparent</p> <p>6 that this was much bigger and more</p> <p>7 dangerous and more transmissible, and that</p> <p>8 these actions may not be sufficient,</p> <p>9 that's when, you know, we decided to make</p> <p>10 the decision to close the clubs in --</p> <p>11 yeah, you know, in the best interest of</p> <p>12 our members and team members because we</p> <p>13 weren't confident that we would be able</p> <p>14 to, you know, control or mitigate the</p> <p>15 spread of the virus inside of the clubs at</p> <p>16 that point, given what we knew.</p> <p>17 BY MR. DENN:</p> <p>18 Q. So just sticking with -- with this date of</p> <p>19 March 15th, you -- you presumed on March 15th that</p> <p>20 COVID-19 was present in all the clubs?</p> <p>21 A. I think we had to presume that COVID-19 was</p> <p>22 present, otherwise why take these actions to</p> <p>23 mitigate the spread of COVID-19?</p> <p>24 Q. And do you recall when you began to make that</p> <p>25 assumption? If it was that day, a week prior to</p>

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<p style="text-align: right;">Page 74</p> <p>1 that day, two weeks prior?</p> <p>2 At what point you began to assume</p> <p>3 that it was present in all the clubs?</p> <p>4 MR. WEISS: Objection to form.</p> <p>5 THE WITNESS: I mean, I don't recall</p> <p>6 at that point. Again, you know, it's --</p> <p>7 it was a very rapidly evolving situation. TONY UEBER July 27, 2022</p> <p>8 We're getting new information every day</p> <p>9 from state, local, and national public</p> <p>10 health officials about, you know, what</p> <p>11 needed to be done to mitigate the</p> <p>12 transmission and -- and what was working</p> <p>13 and what wasn't working.</p> <p>14 BY MR. DENN:</p> <p>15 Q. So as of this email exchange on March 15th, I</p> <p>16 just want to make sure I understand. You presumed</p> <p>17 that COVID was present in all the clubs, but you</p> <p>18 believe that the steps outlined in this letter were</p> <p>19 sufficient to -- to protect the health of staff and</p> <p>20 members?</p> <p>21 A. Correct.</p> <p>22 MR. WEISS: Objection to form.</p> <p>23 BY MR. DENN:</p> <p>24 Q. So if we can jump up one day later to</p> <p>25 March 16th. The plan changed on March 16th,</p>	<p style="text-align: right;">Page 75</p> <p>1 correct?</p> <p>2 A. Sometime on the 15th, 16th, yes.</p> <p>3 Q. And I think you indicated that you, along</p> <p>4 with the board and owners, were the -- the people</p> <p>5 who made the ultimate decision to close all the</p> <p>6 clubs?</p> <p>7 A. Correct.</p> <p>8 Q. What -- what new piece of information did you</p> <p>9 receive between the -- you know, the drafting of</p> <p>10 this document and -- and March 16th that changed</p> <p>11 your -- your view as to what the plan should be?</p> <p>12 A. I don't recall specifically. So generally</p> <p>13 speaking, I think, you know, we were getting more</p> <p>14 information again from state, local, and public</p> <p>15 health officials. More states were issuing -- and</p> <p>16 local municipalities were issuing orders to close</p> <p>17 health clubs and -- and other businesses.</p> <p>18 And it became -- you know, people</p> <p>19 were stopped -- people were stopping travel. It</p> <p>20 just -- this became more and more apparent that this</p> <p>21 was bigger and more serious. And nobody had a good</p> <p>22 answer on what needed to be done in order to control</p> <p>23 the spread. And that was the information that then</p> <p>24 led us to say the actions that we had, you know,</p> <p>25 thought would be sufficient over the course of the</p>
<p style="text-align: right;">Page 76</p> <p>1 weekend were -- were not sufficient.</p> <p>2 We didn't feel at that point that</p> <p>3 we -- we could comfortably ensure the health and</p> <p>4 safety of our team members and members. And so we</p> <p>5 made what, you know, was a very difficult decision</p> <p>6 to close all the clubs until we could sort through,</p> <p>7 you know, what needed to be done, if anything, at</p> <p>8 that point, which is why one of the reasons we</p> <p>9 referred to a temporary closure in a lot of the</p> <p>10 communications because we weren't sure how long this</p> <p>11 was going to take, how long the pandemic was going</p> <p>12 to last, what new information would come out and</p> <p>13 what type of risk mitigation actions needed to be</p> <p>14 taken.</p> <p>15 So, you know, in the best interests</p> <p>16 of our team members' and members' health, we made</p> <p>17 the difficult decision to close the clubs until we</p> <p>18 could have a better handle on where things stood and</p> <p>19 what needed to be done. U.S. Legal Support www.uslegalsupport.com</p> <p>20 Q. Sitting here today, would you agree that --</p> <p>21 that the difference between the steps that were</p> <p>22 outlined on March 15th and closing all clubs</p> <p>23 nationally is -- is fairly significant?</p> <p>24 A. It -- taking the actions that we were taking</p> <p>25 were already very significant. This was just the</p>	<p style="text-align: right;">Page 77</p> <p>1 next step in -- you know, 100 percent assurance that</p> <p>2 this virus was not going to be spread in the clubs</p> <p>3 until we could get more information on what we</p> <p>4 needed to do to -- to be able to operate safely.</p> <p>5 Q. And sitting here today, you don't recall any</p> <p>6 specific piece of public health information that you</p> <p>7 received on the 16th that -- that caused the -- the</p> <p>8 change?</p> <p>9 MR. WEISS: Objection to form.</p> <p>10 THE WITNESS: I don't. No. I mean,</p> <p>11 it's -- no.</p> <p>12 BY MR. DENN:</p> <p>13 Q. On the 16th, you also learned that</p> <p>14 Fitness International was going to be closing all of</p> <p>15 its clubs that evening, right?</p> <p>16 A. Yes.</p> <p>17 Q. And Fitness International is IA Fitness?</p> <p>18 A. Correct.</p> <p>19 Q. And are they one of your primary competitors?</p> <p>20 A. Yes.</p> <p>21 Q. And that was -- that was new information to</p> <p>22 you on the 16th, that they were going to be closing</p> <p>23 that evening?</p> <p>24 A. Yes. Specifically that they were going to</p> <p>25 close all their clubs on -- on that date at a</p>

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<p style="text-align: right;">Page 78</p> <p>1 specific time. Was new information -- I can't</p> <p>2 recall whether they'd already closed some clubs in</p> <p>3 some markets or not, but as far as broad, national</p> <p>4 closure, yes, that was new information.</p> <p>5 Q. And you -- you forwarded that information on</p> <p>6 to your investors on the 16th as well, correct?</p> <p>7 A. If there's a letter to that effect, I don't recall. But I would assume so.</p> <p>8</p> <p>9 Q. Well, if you can pull out Exhibit Q, and I</p> <p>10 think that that is 11 for your deposition.</p> <p>11 A. Okay.</p> <p>12 - - -</p> <p>13 (Whereupon, Exhibit 11 was marked for</p> <p>14 identification.)</p> <p>15 - - -</p> <p>16 BY MR. DENN:</p> <p>17 Q. And just let me know when you've had a chance</p> <p>18 to look it over.</p> <p>19 A. Yes. Okay.</p> <p>20 Q. So this is an email from you to Roland Smith,</p> <p>21 Alex Mehfar, Chandler Anthony, and Martin Eltrich,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. And are they -- are they the owners of the</p> <p>25 club, of the company?</p>	<p style="text-align: right;">Page 79</p> <p>1 A. They are one of the owners. They're the --</p> <p>2 well, Roland was the chairman. So not an owner.</p> <p>3 But he was a chairman of the board. Alex, Chandler,</p> <p>4 and Martin are the three principals with AEA, which</p> <p>5 was the lead investor.</p> <p>6 Q. And you are forwarding to them the</p> <p>7 information that LA Fitness is going to close all</p> <p>8 clubs effective 8:00 p.m. on March 16th, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And your email to them states "They are</p> <p>11 targeting 8:00 p.m. PST. I think it would be good</p> <p>12 if we could announce jointly with them and</p> <p>13 Lifetime."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. So am I correct in inferring that at the time</p> <p>17 that you sent this email, that the decision had not</p> <p>18 yet been made to close nationally?</p> <p>19 A. No. It -- I wouldn't make that assumption</p> <p>20 based off of the email. But it is saying that if we</p> <p>21 could announce with them, that that would be -- that</p> <p>22 would be good.</p> <p>23 Q. Well, do you recall if at the time that you</p> <p>24 sent this email that -- that -- whether or not</p> <p>25 24 Hour Fitness had made its decision?</p>
<p style="text-align: right;">Page 80</p> <p>1 A. I don't recall specifically what time we made</p> <p>2 that decision, no.</p> <p>3 Q. Do you recall if at the time the decision was</p> <p>4 made, you were aware that LA Fitness was going to be</p> <p>5 closing nationally?</p> <p>6 A. Can you repeat the question, please?</p> <p>7 Q. Sure.</p> <p>8 A. I just want to make sure I give an accurate</p> <p>9 answer.</p> <p>10 Q. Yeah.</p> <p>11 I -- at the time that -- that you</p> <p>12 decided to close all of 24 Hour Fitness' clubs</p> <p>13 nationally, were you aware that LA Fitness was</p> <p>14 planning to close all of its clubs down?</p> <p>15 A. I don't recall. No.</p> <p>16 Q. Why did you think it would be good if you</p> <p>17 could announce jointly with them?</p> <p>18 A. Well, I think it shows that, you know, as an</p> <p>19 industry, that we're collectively taking actions to</p> <p>20 do the right thing to protect members and -- and</p> <p>21 team members. And that, you know, we're not out</p> <p>22 there on our own. But, you know, as an industry,</p> <p>23 we're doing what -- what we need to do to -- to do</p> <p>24 what's right for our members and team members.</p> <p>25 Q. You've indicated that -- that health concerns</p>	<p style="text-align: right;">Page 81</p> <p>1 played a role in the change from March 15th to</p> <p>2 March 16th.</p> <p>3 Did concerns -- did some of the</p> <p>4 concerns that you had mentioned regarding membership</p> <p>5 attrition also play a role in that decision?</p> <p>6 MR. WEISS: Objection to form.</p> <p>7 THE WITNESS: No. Not at this point.</p> <p>8 No, definitely not. I mean, this was</p> <p>9 about health and public safety and making</p> <p>10 sure we were doing the right thing,</p> <p>11 regardless of the business implications.</p> <p>12 I mean, closing the clubs is not -- I</p> <p>13 mean, you can see from the emails over the</p> <p>14 weekend we were trying to do everything we</p> <p>15 could to balance those two competing, you</p> <p>16 know, challenges. But by this point, it</p> <p>17 became apparent that, you know, there was</p> <p>18 no way possible to be able to keep the</p> <p>19 clubs open given the information that we</p> <p>20 had. And so we made the difficult</p> <p>21 decision to have to close all the clubs.</p> <p>22 I mean, that's the only information that</p> <p>23 changed.</p> <p>24 BY MR. DENN:</p> <p>25 Q. Okay.</p>

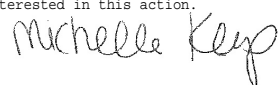
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<p style="text-align: right;">Page 82</p> <p>1 A. The business trends were the business trends.</p> <p>2 There was no business trend difference between that</p> <p>3 Sunday and that Monday.</p> <p>4 Q. If you could take a look at Exhibit R. And</p> <p>5 we can mark that as --</p> <p>6 MR. DENN: Let me ask the court</p> <p>7 reporter. I forgot. Is it 11 or 12?</p> <p>8 THE WITNESS: I believe it's 12.</p> <p>9 THE STENOGRAPHER: It's 12.</p> <p>10 MR. DENN: Okay. And I can mark this</p> <p>11 as Exhibit 12.</p> <p>12 - - -</p> <p>13 (Whereupon, Exhibit 12 was marked for</p> <p>14 identification.)</p> <p>15 - - -</p> <p>16 BY MR. DENN:</p> <p>17 Q. And just let me know when you've had a chance</p> <p>18 to look it over.</p> <p>19 A. Yes. Okay.</p> <p>20 Q. So this is a set of documents that were sent</p> <p>21 to people internal to 24 Hour Fitness, correct?</p> <p>22 MR. WEISS: Objection.</p> <p>23 THE WITNESS: Which one? I mean,</p> <p>24 there's -- there's two -- are you</p> <p>25 referring to the email from Amy or to the</p>	<p style="text-align: right;">Page 83</p> <p>1 email that she forwarded from field</p> <p>2 communications?</p> <p>3 BY MR. DENN:</p> <p>4 Q. I'm referring to the attachments to -- to the</p> <p>5 email.</p> <p>6 A. Yes. They would have been internal and</p> <p>7 within the operations organization to provide more</p> <p>8 details on exactly what was happening and what they</p> <p>9 needed to do.</p> <p>10 Q. And -- and the purpose of -- of the -- just</p> <p>11 looking at the first one, which is the GM Leaders</p> <p>12 Guide?</p> <p>13 A. Yes.</p> <p>14 Q. The purpose of this document is to explain to</p> <p>15 management, people at the club level what was</p> <p>16 happening and the reasons for it?</p> <p>17 A. Correct.</p> <p>18 MR. WEISS: Objection to form.</p> <p>19 BY MR. DENN:</p> <p>20 Q. Is that correct?</p> <p>21 A. Yes. Correct.</p> <p>22 Q. Okay. So just looking at that document, if</p> <p>23 we can -- well, let me ask you first.</p> <p>24 Did you -- do you recall seeing this</p> <p>25 particular document before it went out?</p>
<p style="text-align: right;">Page 84</p> <p>1 A. I most likely would not have, no. I mean,</p> <p>2 this was probably within the operations team taking</p> <p>3 our macro communications and -- and moving it into</p> <p>4 more details for the club personnel. I wouldn't</p> <p>5 have reviewed this. I would be surprised if I did.</p> <p>6 Q. Whose job was it to review communications</p> <p>7 like this?</p> <p>8 A. Ultimately, it would have been Karl Sanft who</p> <p>9 was the chief operating officer at the time.</p> <p>10 Q. Okay. Looking at the first page of this</p> <p>11 GM Leaders Guide titled "What's happening?" And I</p> <p>12 just wanted to review with you the -- the language</p> <p>13 of that.</p> <p>14 The second paragraph states "Due to</p> <p>15 the outbreak of COVID-19, the world is now grappling</p> <p>16 with an issue of enormous scale and human impact.</p> <p>17 Employers everywhere are having to take emergency</p> <p>18 actions to deal with slowing business operations</p> <p>19 across the board. The current situation is</p> <p>20 similarly impacting 24 Hour Fitness. We've seen a</p> <p>21 significant decline in club member traffic and</p> <p>22 sign-ups, putting even greater strain on our already</p> <p>23 challenging financial picture. This unprecedented</p> <p>24 situation is having a dramatic impact on our</p> <p>25 business and our people, and it is imperative that</p>	<p style="text-align: right;">Page 85</p> <p>1 we take immediate action to ensure that we can</p> <p>2 continue providing services to our club members and</p> <p>3 sustain our business for our team members over the</p> <p>4 long term. As a result, starting the week of</p> <p>5 March 16th we are temporarily closing all clubs</p> <p>6 until further notice no later than Tuesday,</p> <p>7 March 17th, at 12:00 o'clock a.m."</p> <p>8 You see the section that I was just</p> <p>9 reading?</p> <p>10 A. Yes.</p> <p>11 Q. This GM Leaders Guide seems to indicate --</p> <p>12 and you can correct me if I'm wrong -- to the</p> <p>13 leadership at the club level that to some degree at</p> <p>14 least, the temporary closure of all clubs is being</p> <p>15 done for business reasons, correct?</p> <p>16 MR. WEISS: Objection to form.</p> <p>17 THE WITNESS: No. I think that says</p> <p>18 in the first sentence, "Due to outbreak of</p> <p>19 COVID-19, the clubs are being closed."</p> <p>20 BY MR. DENN:</p> <p>21 Q. Yeah, I'm -- can you -- you can feel free to</p> <p>22 disagree with me about what it says. It's obviously</p> <p>23 in black and white.</p> <p>24 But is it your testimony that there</p> <p>25 is not a suggestion in this message to the club</p>

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<p style="text-align: right;">Page 90</p> <p>1 THE VIDEOGRAPHER: Before we conclude</p> <p>2 the deposition, Counsel, could we just</p> <p>3 have all transcript and video orders on</p> <p>4 the record?</p> <p>5 And we don't need Mr. Ueber for this.</p> <p>6 I -- if you're okay with that, Mr. Weiss.</p> <p>7 MR. WEISS: Yeah, you can sign off,</p> <p>8 if you want, Tony.</p> <p>9 THE WITNESS: All right.</p> <p>10 THE VIDEOGRAPHER: Thank you,</p> <p>11 Mr. Ueber.</p> <p>12 MR. WEISS: Thank you.</p> <p>13 I think we probably have an order --</p> <p>14 like a standing order, if I'm not</p> <p>15 mistaken. I do not have that because I'm</p> <p>16 not -- like, I don't know the ins and outs</p> <p>17 of, like, the type -- form of video and</p> <p>18 stuff that we typically order, but</p> <p>19 whatever we've done in the past for other</p> <p>20 depositions, we'd want to do the same</p> <p>21 thing here. And probably if we could just</p> <p>22 get a rough transcript for the court</p> <p>23 reporter, that would be good too.</p> <p>24 I don't know about you guys.</p> <p>25 Matt?</p>	<p style="text-align: right;">Page 91</p> <p>1 MR. DENN: Yeah. We -- I believe</p> <p>2 we've been getting a regular transcript</p> <p>3 and a rough transcript.</p> <p>4 MR. WEISS: Yeah. Yeah. And so,</p> <p>5 James, if you have any questions, you</p> <p>6 could email me after -- if you don't see,</p> <p>7 like, an order in there for us.</p> <p>8 Do you have my email address or --</p> <p>9 THE VIDEOGRAPHER: I believe Michelle</p> <p>10 has it.</p> <p>11 MR. WEISS: Yeah. Yeah. So just</p> <p>12 send it --</p> <p>13 THE VIDEOGRAPHER: That'll work too.</p> <p>14 MR. WEISS: So just send an email if</p> <p>15 you have a problem.</p> <p>16 THE VIDEOGRAPHER: Okay.</p> <p>17 MR. WEISS: If that's okay.</p> <p>18 THE VIDEOGRAPHER: Yeah. I think</p> <p>19 that works.</p> <p>20 Is that okay for you, Michelle?</p> <p>21 THE STENOGRAPHER: Yeah. Any other</p> <p>22 orders?</p> <p>23 MR. ANDERSON: This is</p> <p>24 Dennis Anderson for QBE and Gsinda. We</p> <p>25 would just like a full-sized and a</p>
<p style="text-align: right;">Page 92</p> <p>1 condensed PDF.</p> <p>2 MR. McNABNEY: And this is</p> <p>3 Joel McNabney for Liberty Mutual. We'll</p> <p>4 take a copy of the final. We don't need a</p> <p>5 rough draft. Whenever the final is ready.</p> <p>6 MS. McDONNELL: Michelle, this is</p> <p>7 Marlie. I emailed you our order.</p> <p>8 THE STENOGRAPHER: Okay. Thank you.</p> <p>9 THE VIDEOGRAPHER: And, Mr. Whang, if</p> <p>10 you're still there?</p> <p>11 (No verbal response.)</p> <p>12 THE VIDEOGRAPHER: I'll conclude the</p> <p>13 deposition right now, Counsel.</p> <p>14 So with that, we conclude the</p> <p>15 deposition. The time is approximately</p> <p>16 2:22 p.m. Eastern.</p> <p>17 Thank you, everyone.</p> <p>18 - - -</p> <p>19 (Whereupon, the deposition was</p> <p>20 concluded at 2:22 p.m.)</p> <p>21 - - -</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 93</p> <p>1 CERTIFICATE</p> <p>2 I HEREBY CERTIFY that the proceedings, evidence,</p> <p>3 and objections are contained fully and accurately in the</p> <p>4 stenographic notes taken by me upon the deposition of</p> <p>5 TONY UEBER taken on JULY 27, 2022, and that this is a true</p> <p>6 and correct transcript of same.</p> <p>7</p> <p>8 I FURTHER CERTIFY that I am neither attorney nor</p> <p>9 counsel for, not related to nor employed by any of the</p> <p>10 parties to the action in which this deposition was taken;</p> <p>11 further, that I am not a relative or employee of any</p> <p>12 attorney or counsel employed in this case, nor am I</p> <p>13 financially interested in this action.</p> <p>14 </p> <p>15</p> <p>16</p> <p>17 Michelle Keys</p> <p>18 Stenographer</p> <p>19 and Notary Public</p> <p>20</p> <p>21 (The foregoing certification of</p> <p>22 this transcript does not apply to any</p> <p>23 reproduction of the same by any means</p> <p>24 unless under the direct control and/or</p> <p>25 supervision of the certifying reporter.)</p>

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